

CHAPTER 104
SENATE BILL No. 97

AN ACT creating the promoting employment across Kansas act; amending K.S.A. 2008 Supp. 79-3234 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) The provisions of sections 1 through 7, and amendments thereto, shall be known and may be cited as the promoting employment across Kansas act.

(b) It shall be the intent of this act to foster economic development and the creation of new jobs and opportunities for the citizens of Kansas through incentivizing the repatriation of business facilities, other operations and jobs from foreign countries and to incentivize the relocation of business facilities, other operations and jobs from other states to Kansas. The primary objective of this legislation is economic development for Kansas. The state of Kansas, the secretary of the department of commerce and the department of commerce shall solicit and approve applications by qualified companies pursuant to this act.

New Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Act" means the provisions of sections 1 through 7, and amendments thereto.

(b) "County average wage" means the average wage paid to employees located in the county where the qualified company intends to employ new employees as reported by the department of labor in its annual report for the previous year.

(c) "Department" means the department of commerce.

(d) "High-impact project" means a business development project for which the qualified company shall meet the requirements of subsection (c) of section 3, and amendments thereto.

(e) "NAICS" means the North American industry classification system.

(f) "Metropolitan county" means the county of Douglas, Johnson, Sedgwick, Shawnee or Wyandotte.

(g) "New employee" means a person newly employed by the qualified company in the qualified company's business operating in Kansas during the taxable year for which benefits are sought under section 3, and amendments thereto. A person shall be deemed to be so engaged if such person performs duties in Kansas in connection with the operation of the Kansas business on: (1) A regular, full-time basis; or (2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year. Employees acquired or relocated to Kansas from another state through an expansion or relocation of a business operation to Kansas from another state shall be considered as new employees.

(h) "Non-metropolitan county" means any county that is not a metropolitan county.

(i) (1) "Qualified company" means any corporation, partnership or other entity, organized for profit making available to its full-time employees adequate health insurance coverage and paying at least 50% of the premium for such health insurance, which meets the requirements of section 3, and amendments thereto.

(2) "Qualified company" shall not include any corporation, partnership or other entity: (A) Which is identified by any of the following NAICS code groups, sectors or subsectors:

(i) Industry group 7132 or 8131;

(ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services);

or

(iii) subsector 722;

(B) which is a bioscience company, as defined in K.S.A. 2008 Supp. 74-99b33, and amendments thereto;

(C) which is delinquent in the payment of any nonprotested taxes or any other amounts due to the federal government, the state of Kansas or any other political taxing subdivision; or

(D) which has filed for or has publicly announced its intention to file for bankruptcy protection.

(3) Notwithstanding any provision of this subsection, except for par-

agraphs (2)(B), (C) and (D), a company may be deemed a qualified company if such company's headquarters or administrative offices located in this state serve an international or multi-state territory and such company meets the requirements of section 3, and amendments thereto.

(j) "Secretary" means the secretary of the department of commerce.

New Sec. 3. (a) In order to qualify for benefits under this act a qualified company shall relocate an existing business facility, office, department or other operation located outside the state of Kansas, whether located in a foreign country or another state, and locate the jobs from such business facility, office, department or other operation to Kansas. A qualified company may contract with an unrelated third party to perform services whereby the third party serves as the legal employer of the new employees providing services to the qualified company and such services are performed in Kansas and the third party and the new employees are subject to Kansas state withholding.

(b) Any qualified company that locates its business operation in a metropolitan county and will hire at least 10 new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto, or any qualified company that locates its business operation in a non-metropolitan county and will hire at least five new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto, shall be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

- (1) Five years if the new employees are compensated at a rate equal to at least 100% of the county average wage;
- (2) six years if the new employees are compensated at a rate equal to at least 110% of the county average wage; or
- (3) seven years if the new employees are compensated at a rate equal to at least 120% of the county average wage.

(c) Any qualified company that engages in a high-impact project whereby the qualified company will hire at least 100 new employees within five years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto, shall be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

- (1) Seven years if the new employees are compensated at a rate equal to at least 100% of the county average wage;
- (2) eight years if the new employees are compensated at a rate equal to at least 110% of the county average wage;
- (3) nine years if the new employees are compensated at a rate equal to at least 120% of the county average wage; or
- (4) ten years if the new employees are compensated at a rate equal to at least 140% of the county average wage.

(d) In the event that a qualified company contracts with a third party as described in paragraphs (a)(3) and (4), the third party shall remit payments equal to the amount of Kansas payroll withholding taxes the qualified company is eligible to retain under this section to the qualified company, and report such amount to the department of revenue as required pursuant to subsection (a) of section 5, and amendments thereto.

New Sec. 4. (a) Any qualified company meeting the requirements of section 3, and amendments thereto, may apply to the secretary for benefits under this act. The application shall be submitted on a form and in a manner prescribed by the secretary, and shall include: (1) Evidence that the applicant is a qualified company; and (2) evidence that the applicant meets the requirements of section 3, and amendments thereto.

(b) The secretary shall either approve or disapprove the application. Any qualified company whose application is approved shall be eligible to receive benefits under this act as of the date such qualified company enters into an agreement with the secretary in accordance with this section.

(c) Upon approval of an application for benefits under this act, the secretary may enter into an agreement with the qualified company for benefits under this act. If necessary, the secretary may also enter into an agreement with any third party described in subsection (a) of section 3, and amendments thereto, or such third party may be a party to the agreement between the qualified company and the secretary. The agreement shall commit the secretary to certify to the secretary of revenue: (1) That

the qualified company is eligible to receive benefits under this act; (2) the number of new employees hired by the qualified company; and (3) the amount of gross wages being paid to each new employee.

(d) The agreement between the qualified company and the secretary shall be entered into before any benefits may be provided under this act, and shall specify that should the qualified company fail to comply with the terms and conditions set forth in the agreement, or fails to comply with the provisions set forth in this act, the secretary may terminate the agreement, and the qualified company shall not be entitled to any further benefits provided under this act and shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the qualified company, or remitted to the qualified company by a third party, pursuant to this act as of the date the agreement is terminated.

(e) A qualified company that is already receiving benefits pursuant to this act may apply to the secretary for additional benefits if the qualified company meets the requirements of section 3, and amendments thereto.

(f) A qualified company seeking benefits shall not be allowed to participate in the IMPACT program, or any program pursuant to K.S.A. 74-50,102, and amendments thereto, or any other program in which any portion of such qualified company's Kansas payroll withholding taxes have been pledged to finance indebtedness or transferred to or for the benefit of such company. A qualified company shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such credits would otherwise be earned for the hiring of new employees and the qualified company has retained any Kansas payroll withholding taxes from wages of such employees.

(g) The secretary shall adopt rules and regulations necessary to implement and administer the provisions of this act.

New Sec. 5. (a) Any qualified company eligible to receive benefits pursuant to section 3, and amendments thereto, shall complete and submit to the department of revenue the amount of Kansas payroll withholding tax being retained by the qualified company pursuant to this act in a manner prescribed by the director of taxation.

(b) The secretary of revenue shall adopt rules and regulations necessary to implement and administer the provisions of this act. The secretary of revenue and the secretary of commerce shall work together to coordinate a set of procedures to implement the provisions of this act.

New Sec. 6. The secretary shall conduct an annual review of the activities undertaken by a qualified company pursuant to this act to ensure that the qualified company is in compliance with the provisions of this act, any rules and regulations adopted by the secretary with respect to this act and the agreement described in section 4, and amendments thereto. The books and records concerning employment and wages of any employees for which the qualified company or third party has retained any Kansas payroll withholding taxes shall be available for inspection by the secretary or the secretary's duly authorized agents or employees at all times during business hours. The secretary may request the department of revenue to audit the qualified company or third party for compliance with the provisions of this act.

New Sec. 7. The secretary shall transmit annually to the governor, the standing committees on taxation and assessment and commerce of the senate, the standing committees on taxation and economic development and tourism of the house of representatives and the joint committee on economic development, or any successor committee, a report, based on information received from each qualified company receiving benefits under this act, describing the following:

- (a) The names of the qualified companies;
- (b) the types of qualified companies utilizing the act;
- (c) the location of such companies and the location of such companies' business operations in Kansas;
- (d) the number of new employees hired;
- (e) the wages paid for such new employees;
- (f) the annual amount of benefits provided under this act;
- (g) the estimated net state fiscal impact, including the direct and indirect new state taxes derived from the new employees hired; and
- (h) an estimate of the multiplier effect on the Kansas economy of the benefits received under this act.

Sec. 8. K.S.A. 2008 Supp. 79-3234 is hereby amended to read as

follows: 79-3234. (a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

(4) disclose taxpayer information from income tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) disclose to the secretary of commerce *the following*: (A) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit program administered by the secretary of commerce; and (B) *findings related to a compliance audit conducted by the department of revenue upon the request of the secretary of commerce pursuant to section 6, and amendments thereto*;

(6) disclose income tax returns to the state gaming agency to be used solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed except to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the department of wildlife and parks to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of the federal social security act (42 U.S.C. §651 et seq.) and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish

to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act;

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that certain individuals' reported compensation is in compliance with the Kansas public employees retirement act at K.S.A. 74-4901 et seq., and amendments thereto; and

(13) provide taxpayer information of persons suspected of violating K.S.A. 2008 Supp. 44-766, and amendments thereto, to the staff attorneys of the department of labor for the purpose of determining compliance by any person with the provisions of K.S.A. 2008 Supp. 44-766, and amendments thereto, which information shall be limited to withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results or status of such audit or investigation.

(d) Any person receiving information under the provisions of subsection (c) shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e).

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal revenue rules or regulations, or other federal law.

Sec. 9. K.S.A. 2008 Supp. 79-3234 is hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 20, 2009.
